

ESTTA Tracking number: **ESTTA154241**

Filing date: **08/01/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Washington Mutual, Inc.
Granted to Date of previous extension	08/01/2007
Address	1301 Second AvenueWMC 3501 Seattle, WA 98101 UNITED STATES
Attorney information	Lynne E. Graybeal Perkins Coie LLP 1201 Third Avenue, Suite 4800 Seattle, WA 98101 UNITED STATES pctrademarks@perkinscoie.com, lgraybeal@perkinscoie.com Phone:206-359-8000

### Applicant Information

Application No	78856047	Publication date	04/03/2007
Opposition Filing Date	08/01/2007	Opposition Period Ends	08/01/2007
Applicant	Liffey, Brendan M Suite #5B 240 E 93rd St. New York, NY 10128 UNITED STATES		

### Goods/Services Affected by Opposition

Class 035. All goods and services in the class are opposed, namely: Matching borrowers with potential lenders in the field of consumer and mortgage lending by means of an internet website and interactive television
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)

### Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	OPTIMUM PRICING		

Goods/Services	mortgage lending services; home equity loans and home equity lines of credit; specialty finance lending services, namely lending to borrowers who do not fit standard underwriting models; credit card services; providing interactive websites containing information and services related to the foregoing services and related accounts
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Attachments	Liffey NOO.pdf ( 3 pages )(154560 bytes )
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Signature	/Matthew D. Schneller/
Name	Matthew D. Schneller
Date	08/01/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

WASHINGTON MUTUAL, INC.

Opposer,

v.

BRENDAN LIFFEY

Applicant.

Opposition No.:

NOTICE OF OPPOSITION

Application Serial No.: 78/856,047

International Classes: 35

Filing Date: April 6, 2006

Publication date: April 3, 2007

Opposer Washington Mutual, Inc., Washington corporation ("Opposer" or "Washington Mutual") having its principal place of business at Washington Mutual Center 3501, 1301 Second Avenue, Seattle, Washington 98101, believes that it will be damaged by the issuance of a registration for the mark OPTIMUM MORTGAGES, as applied for in application Serial No. 78/856,047 filed on April 6, 2006 (the "Application") by Brendan Liffey ("Applicant") and, having been granted extensions of time to oppose until August 1, 2007, hereby opposes the same in class 35.

As grounds for opposition, Washington Mutual alleges that:

1. Washington Mutual, founded in Seattle, Washington in 1889, is the nation's largest savings institution and ninth largest banking company. Operating more than 2,100 offices nationwide, Washington Mutual provides a wide range of consumer and commercial banking services, mortgage, consumer and commercial lending services, credit card services, financial services, securities brokerage services, mutual fund management services, property/casualty and life insurance sales, and underwriting services for insurance annuities. Among other things, it is among the nation's largest home mortgage originators and servicers.

2. Washington Mutual has used the trademark OPTIMUM PRICING since March 31, 2006 for mortgage lending services; home equity loans and home equity lines of credit; specialty finance lending services, namely lending to borrowers who do not fit standard underwriting models; credit card services; providing interactive websites containing information and services related to the foregoing services and related accounts.

3. The filing date of the Application, an intent-to-use application, was April 6, 2004.

4. Therefore, there is no question as to Opposer's priority.

5. The goods and services for which Applicant seeks to register the OPTIMUM MORTGAGES mark are identical or closely related to Opposer's mortgage services, consumer lending services, property insurance services, mortgage educational services, and real estate educational services offered under its OPTIMUM PRICING mark. Both marks also cover mortgage-related services offered over the Internet.

6. On information and belief, the services for which Applicant seeks to register the mark in the Application are or may be sold to the same types of consumers through the same channels of trade.

7. Applicant's OPTIMUM MORTGAGES mark so resembles Opposer's OPTIMUM PRICING mark and as to be likely, when applied to the services of Applicant, to cause confusion, to cause mistake, and to deceive with consequent injury to Opposer, the trade and the public.

8. Opposer further avers that it will be damaged if the application herein opposed is allowed to proceed to registration, because consumers and prospective consumers are likely to be confused, mistaken or deceived into believing that

Applicant or its goods and services are connected with, sponsored by, or approved by Opposer. Any defect, objection or fault found with Applicant's goods or services marketed or sold under OPTIMUM MORTGAGES mark will reflect upon and seriously injure the valuable reputation that Opposer has established for the services and goods marketed and provided under its OPTIMUM PRICING mark. Registration of the OPTIMUM MORTGAGES mark would also damage Opposer because such registration would grant a statutory exclusive right to Applicant in violation and derogation of the prior and superior rights of Opposer, would unduly narrow the scope of protection afforded to Opposer's OPTIMUM PRICING mark.

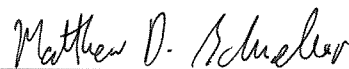
9. The mark in the Application is merely descriptive of the services listed.

10. WHEREFORE, Opposer respectfully prays that its opposition be sustained and that the application for registration of Serial No. 78/856,047 be denied and refused. The opposition fee in the sum of \$300.00 are filed herewith.

DATED: August 1, 2007.

Respectfully submitted,

PERKINS COIE LLP



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